

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-292

SCOTT BRADFORD

APPELLANT

V.

ELIZABETH BRADFORD JOHNSON
APPELLEE

Opinion Delivered JUNE 16, 2010

APPEAL FROM THE VAN BUREN
COUNTY CIRCUIT COURT
[NO. DR 2000-314]

HONORABLE CHARLES E.
CLAWSON, JR., JUDGE

REVERSED AND REMANDED

ROBERT J. GLADWIN, Judge

Scott Bradford challenges the Van Buren County Circuit Court's failure to find a change in circumstances and failure to follow the family-support chart in this post-decree, child-support litigation. We reverse and remand for further findings in accordance with the Arkansas Supreme Court's Administrative Order No. 10.

Facts

Scott Bradford and Elizabeth Bradford Johnson were married and had two children. When they divorced, Johnson was granted custody, and Bradford was ordered to pay child support.¹ On August 20, 2009, Johnson filed a motion stating that she had no objection to

¹Because neither the divorce decree nor any post-decree orders are included in the record or addendum on appeal and the circuit court's order does not include the necessary findings as set forth in Administrative Order No. 10, this court has no way of knowing the date that the parties divorced, the amount of child support Bradford was originally ordered to pay Johnson, if that amount has been modified since the decree, or whether the circuit

her sixteen-year-old daughter living with Bradford and custody being formally changed to him effective August 14, 2009. She asked that the parties' obligations concerning support and visitation be redetermined by subsequent order. She stated that Bradford historically failed to pay his support and medical expenses for the children and should be held in contempt for these failures.

In his response, Bradford pointed out that their daughter began living with him in May 2009, and because he only had two weeks of summer visitation with her in the early part of the summer, his credit for child-support obligations should begin before August 14, 2009. He also claimed that child-support issues had been litigated by the Office of Child Support Enforcement (OCSE) and res judicata would apply to any issues of past-due arrearages determined in that hearing and order. Johnson amended her motion to include an exhibit, which is a spreadsheet purporting to show Bradford's payment of an outstanding judgment for delinquent support.

A hearing was held October 19, 2009, before the Van Buren County Circuit Court, and evidence, including Bradford's affidavit of financial means, the 2008 tax returns for Bradford and his wife Melanie, and Johnson's affidavit of financial means, along with testimony from the parties and Bradford's wife Melanie were considered. The trial court granted Johnson's motion by formally changing custody of their daughter to Bradford and

court has previously determined the amount of child-support arrearage at issue in the current appeal.

setting forth visitation for both children. Further, the trial court ordered child support to be paid as follows:

2. [Bradford] shall continue to pay \$57.00 per week for the support of the minor children and \$33.00 per week on his child support arrearage. The \$33.00 payable on the arrearage shall be allocated to principal only. Interest shall continue to accrue at 10% per annum. At such time as [Bradford's] arrearage is paid in full, the Court shall hold another hearing to determine how the accrued interest through the date of the last payment of the arrearage shall be paid. At that time the Court shall consider the payment of the interest and the payment of child support. There shall be no reduction in child support payable by [Bradford] until such time as the principal of the arrearage is paid in full. [Bradford] shall annually by June 1 of each year furnish to [Johnson] a copy of his federal and state income tax returns with all W-2s, 1099s, and other attachments thereto.
3. [Johnson] shall continue to have the minor children for Income Tax dependents pending [Bradford's] payment of his child support arrearage.

A notice of appeal was timely filed, and this appeal followed.

Applicable Law

Our standard of review for an appeal from a child-support order is de novo on the record, and we will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Ward v. Doss*, 361 Ark. 153, 205 S.W.3d 767 (2005). A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Akins v. Mofield*, 355 Ark. 215, 132 S.W.3d 760 (2003). We give due deference to the trial court's superior position to determine the credibility of the witnesses and the weight to be given their testimony. *Id.* In a child-support determination, the amount of child support lies within the sound discretion of the trial court, and the lower

court's findings will not be reversed absent an abuse of discretion. *Id.* However, a trial court's conclusions of law are given no deference on appeal. *Id.*

It is axiomatic that a change in circumstances must be shown before a court can modify an order for child support. *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005); *Martin v. Scharbor*, 95 Ark. App. 52, 233 S.W.3d 689 (2006). In addition, the party seeking modification has the burden of showing a change in circumstances. *See Martin, supra.* In determining whether there has been a change in circumstances warranting an adjustment in support, the court should consider remarriage of the parties, a minor reaching majority, change in the income and financial conditions of the parties, relocation, change in custody, debts of the parties, financial conditions of the parties and families, ability to meet current and future obligations, and the child-support chart. *See id.* We have made it clear that a finding that a material change in circumstances has occurred is subject to a clearly erroneous standard of review. *See id.*

The Arkansas General Assembly has provided that the appropriate method for determining the amount of child support to be paid by the noncustodial parent is by reference to a family-support chart. *Davis v. Bland*, 367 Ark. 210, 238 S.W.3d 924 (2006). Arkansas Code Annotated section 9-12-312(a)(2) (Repl. 2009) states:

In determining a reasonable amount of support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

Administrative Order No. 10 of the Arkansas Supreme Court states in pertinent part in section (I):

It is a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart is the amount of child support to be awarded in any judicial proceeding for divorce, separation, paternity, or child support. The court may grant less or more support if the evidence shows that the needs of the dependents require a different level of support.

All orders granting or modifying child support (including agreed orders) shall contain the court's determination of the payor's income, recite the amount of support required under the guidelines, and recite whether the court deviated from the Family Support Chart. If the order varies from the guidelines, it shall include a justification of why the order varies as may be permitted under Section V hereinafter. It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Family Support Chart is correct, if the court enters in the case a specific written finding within the Order that the amount so calculated, after consideration of all relevant factors, including the best interests of the child, is unjust or inappropriate.

Conclusion

Based upon these directives from Administrative Order No. 10, we turn to the circuit court's order. Under section (I) of the administrative order, the circuit court's order "shall contain [1] the court's determination of the payor's income, [2] recite the amount of support required under the guidelines, and [3] recite whether the court deviated from the Family Support Chart." Admin. Order No. 10 (I). The circuit court's order does not contain a determination of Bradford's income, does not refer to the guidelines or the support amount required thereunder, and does not recite whether it deviated from the family-support chart. Therefore, we reverse and remand for further findings by the circuit court in compliance with Administrative Order No. 10 and Arkansas Code Annotated section 9-12-312 regarding that portion of the order devoted to Bradford's child-support obligations.

Cite as 2010 Ark. App. 492

Reversed and remanded.

PITTMAN and GLOVER, JJ., agree.